

Texas Workforce Commission

Member of the Texas Workforce Network

Diane D. Rath, Chair
Commissioner Representing
the Public

Ron Lehman
Commissioner Representing
Employers

Ronald G. Congleton
Commissioner Representing
Labor

Larry E. Temple
Executive Director

February 8, 2005

Mr. Joseph C. Juarez
Regional Administrator, Region IV
U.S. Department of Labor
Employment and Training Administration
525 Griffin St., Room 317
Dallas, Texas 75202

Dear Mr. Juarez:

On behalf of the Texas Workforce Commission, the state operational entity for the Title I Workforce Investment Act (WIA), I respectfully request approval of the enclosed proposed WIA waivers for the State of Texas. The proposed waiver requests were developed in accordance with WIA, Section 189(i)(4), 20 C.F.R. 661.400-661.420, and the draft Training and Employment Guidance Letter referencing the development and submission guidelines for waiver requests.

The requests are for waivers of the provisions of Sections 136(c) and 136(b) to allow greater flexibility when contracting performance measures with the Local Workforce Development Boards (Boards) and the provisions of Section 133(c) and 20 C.F.R. Section 667.160 regarding reallocation among local areas.

As required, included is a description of the process for providing notice and opportunity to comment on the proposed waiver requests to Boards and other interested parties. Two comments were received supporting the flexibility Texas is seeking in both waiver requests. Copies of each are enclosed.

We believe the waivers will provide increased flexibility to the State of Texas and the Boards in implementing reforms to our state's workforce system. The waivers are necessary to promote further system integration and to allow the state and the Boards to continue to meet the workforce needs of employers and individuals seeking employment.

We appreciate the opportunity to submit these waiver requests and look forward to receiving the Secretary's approval. If you have questions or require additional information, please contact Luis M. Macias, Director, Workforce Development Division at (512) 936-0697 or luis.macias@twc.state.tx.us.

Sincerely,



Larry E. Temple
Executive Director

Enclosure

mc: Diane Rath, Chair and Commissioner Representing the Public
Ron Lehman, Commissioner Representing Employers
Ronald G. Congleton, Commissioner Representing Labor
H. E. (Gene) Crump, Jr., Deputy Executive Director
Luis M. Macias, Director, Workforce Development Division

**STATE OF TEXAS
WAIVER REQUEST
WORKFORCE INVESTMENT ACT**

Board Performance Measures Waiver

Statutory and Regulatory Provisions to be Waived:

The Texas Workforce Commission (Commission) requests a waiver under the authority of the Secretary of Labor to waive certain requirements of the Workforce Investment Act (WIA), Title I, Subtitles B and E; and Sections 8–10 of the Wagner-Peyser Act. This authority is granted to the Secretary of Labor under Section 189 of WIA and in the implementing regulations at 20 C.F.R. §661.420. The Commission is seeking a waiver from WIA §136(c)(1) and a modification of Section 136(h)(1).

Background—The Texas Workforce System

The Commission, the state operational entity for WIA, has statutory requirements embodied in §302.021 of the Texas Labor Code to operate an integrated workforce development system, specifically through the consolidation of job training, employment, and employment-related services. As set forth in state statute, the Commission has authority and oversight not only over WIA-funded services, but also over more than twenty job training, employment, and work support services ranging from child care to unemployment insurance.

The 28 Local Workforce Development Boards (Boards) in Texas are responsible for meeting the needs of employers and job seekers with a myriad of funding sources, such as WIA, Wagner-Peyser Employment Services (ES), Child Care and Development Fund, Food Stamp Employment and Training, and Temporary Assistance for Needy Families. In providing Texans with even greater access to workforce development services, the Commission has transitioned three additional programs, once operated at the state level, to the Boards: Trade Act Services and Veterans' Employment and Training¹ (both federally funded) and Project Reintegration of Offenders (Project RIO), a primarily state-funded program designed to reintegrate ex-offenders into the workforce.

The Commission has allocated \$802 million to the Boards for Fiscal Year 2005 from the eight different funding sources to meet the workforce needs of our customers, more than 400,000 employers and an average of 1.8 million job seekers, through Texas' 280 one-stop centers and satellite offices. Clearly, the scope of the Texas workforce system is as big as Texas itself.

Our workforce system is an ever evolving public/private relationship among the Commission, the Boards, employers, services providers, and numerous stakeholders in workforce and economic development. In these days of decreasing federal and state

¹ While state staff provides ES and Veterans' services, the Boards' service providers have day-to-day operational authority for these services.

resources, the nation's workforce system is challenged to create increasingly greater efficiencies. The Commission believes that through integrated workforce system performance measures, the Texas workforce system can become more efficient and effective. Incongruent targets, measurement techniques, and reporting time frame discrepancies incorrectly focus Texas Workforce Center staff on meeting program performance measures rather than meeting employers' needs or on putting people to work. By refocusing Boards' performance assessment from individual program performance measures to universal outcome measures, the Commission strives to better integrate workforce service delivery at the local level.

Waiver Request:

The Commission requests a waiver from WIA §136(c) to allow greater flexibility when contracting performance measures with the Local Workforce Development Boards (Boards). Section 136(b) of WIA provides that state performance measures for WIA shall consist of 17 specific core indicators of performance and customer satisfaction. Section 136(c) provides that local performance measures shall consist of the same core indicators of performance and customer satisfaction as the state.

Specifically, the Commission is requesting the flexibility to modify Board performance measures. The Commission will continue to track and report the 17 core indicators of performance and customer satisfaction at both the state and Board level. However, the Commission may choose not to use all 17 measures in its Board contracts. The Commission is interested in developing Board contracted measures that support integration, such as the Federal Common Measures' definitions for entered employment and job retention.

The requirement to contract the 17 core indicators of performance and customer satisfaction to the Boards unnecessarily silos service delivery. The Commission believes that as long as programs have different measures of success they will require different means of management.

Federal job training programs seldom define performance measures in a common manner, resulting in confusion and an increased reporting burden at the state and local level. For example, "entered employment" is tracked for many One-Stop partner programs; however, the definition and methodology varies among programs. Approval of this waiver would result in Board performance measures with common definitions and methodologies. By promoting a common outcome, service delivery designs for multiple programs can be streamlined. This will help integrate service delivery through the One-Stop Career Centers.

While this proposed waiver would provide the Commission with flexibility in selecting Board performance measures, Section 136(h) continues to provide for sanctions for a Board's failure to meet any of the 17 WIA performance measures. With the approval of this waiver, the 17 performance measures would no longer be contracted to the Boards. However, the Commission will continue to apply the sanction provisions at Section 136(h) to the Boards' new contracted measures.

Description of the Individuals Affected by the Waiver:

Employers, job seekers, incumbent workers, and local staff may benefit from the waiver. The removal of 17 siloed performance measures, and the implementation of more integrated measures, will allow staff to focus on the needs of employers, find job seekers to match those needs, and maximize integrated services to achieve the best outcomes.

Goals to be Achieved by the Waiver:

- **Increase integration of services to customers**
Boards are responsible for implementing many federal and state workforce development programs, allowing them the opportunity to integrate service delivery. However, programs are partially driven by how performance is measured. Programs with different measures of success require different means of management. Rather than focusing on the needs of employers and finding job seekers to fill those needs, staff must focus on the specific outcome expectations of the program that funds the services the customer receives.
- **Increase accountability at the state, local, and service provider levels**
Because Boards are responsible for numerous workforce development programs, co-enrollment of customers in multiple programs is becoming increasingly commonplace. Therefore, the Commission believes that the most effective way to evaluate Boards and to promote accountability is to use integrated performance measures.
- **Provide greater flexibility to Boards in designing and implementing one-stop services**
By eliminating program-specific measures and applying integrated performance measures across all programs, the Commission will promote service delivery designs that are based on employer needs rather than siloed program requirements.

Programmatic Outcomes:

The approval of this waiver would result in administrative relief that would remove barriers to co-enrollment and promote more integrated case management across multiple programs. The new Federal Common Measures have a number of advantages over existing performance measures, and the Commission strongly supports the concept that programs with similar outcome objectives should be measured in a similar fashion.

The Commission has developed a set of system-wide performance measures based on the new Federal Common Measures. The Commission anticipates these new measures will be used by the Texas Legislature at the beginning of the new fiscal year to evaluate the Texas workforce system. Texas' new measures are system measures applied across all programs. For example, there is a system-wide Entered Employment Rate that is based on an unduplicated list of exiters from all workforce programs (using the federal "soft exit"

methodology). These measures make no distinction between customers served by Employment Service, WIA, Temporary Assistance for Needy Families, Food Stamp Employment and Training, other various state-level programs, or a combination of programs.

Approval of this waiver would streamline administrative processes, resulting in maximized resources focused on employment outcomes.

Legal Argument:

Congress has clearly recognized the need for the Secretary of Labor to have as much flexibility as possible in order to assist states in accomplishing the goals of WIA. Section 189(i)(4) of WIA allows for general waivers of statutory or regulatory requirements by the Secretary. Section 189(i)(4)(C) states the Secretary shall provide a waiver if it is determined that the requirements requested to be waived impede the ability of the state or local area to implement their plans.

The purpose of the general statutory and regulatory waiver authority is to provide flexibility to states and local areas and to enhance their ability to improve the statewide workforce investment system. The Secretary's waiver authority provides a vehicle to assist states and local areas in situations in which the regulations impede their ability to implement and continue development of a cohesive delivery system.

Waivers may be requested and granted to address impediments to the implementation of a strategic plan, as stated in Section 189(i)(4)(C), including the continuous improvement strategy, consistent with the key reform principles of WIA, which include:

1. Streamlining services and information to participants through a One-Stop delivery system
2. Empowering individuals to obtain needed services and information to enhance their employment opportunities
3. Ensuring universal access to core employment-related services
4. Increasing accountability of states, localities, and training providers for performance outcomes
5. Establishing stronger roles for Boards and the private sector
6. Providing increased state and local flexibility to implement innovative and comprehensive workforce investment systems
7. Improving youth programs through services that emphasize academic and occupational learning

The Commission, in submitting this waiver request, recognizes the statutory exceptions to the Secretary's authority to approve waivers as stated under 29 U.S.C. Section 2939(i)(4)(A) also known as WIA Section 189(i)(4)(A). The Commission, therefore, is submitting a request for a waiver that does not violate or affect any requirements or provisions of WIA and its related Federal regulations.

State or Local Statutory or Regulatory Barriers:

There are no state or local statutory or regulatory barriers to implementing the requested waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver request, Commission rules and policies will be amended to comply with the terms of the waiver.

Describe the Processes Used to Monitor the Progress in Implementing the Waiver:

The Commission has a monitoring and performance accountability system that measures results for employers and other customers using the Texas workforce system. The Commission continuously analyzes performance reports and compares actual performance with contract targets. The Commission will continue to make adjustments to monitoring performance requirements to ensure that performance goals and objectives are met. The Commission will monitor progress under this waiver by reviewing monthly performance reports, through regularly scheduled conference calls with Board executive directors, and through its monitoring and performance accountability system.

Opportunity for Public Comment:

The concept for this waiver was first introduced at the Commission's November 9, 2004, public meeting; further discussion occurred during a November 12, 2004, conference call with the Boards.

The waiver request was presented at the Commission's January 4, 2005, public meeting and posted to the Texas Workforce Commission's Web site for review and comment. The waiver also was discussed during the January 7, 2005, conference call with the Boards.

Two comments were received supporting the flexibility the state seeks through the waiver. One comment initially stated support for the state seeking flexibility; however, the balance of the comment was beyond the scope of the waiver.

-----Original Message-----

From: Robert Minton [SMTP:robert_xy@msn.com]
Sent: Sunday, January 23, 2005 8:09 AM
To: TWCPolicyComments@twc.state.tx.us
Subject: WIA Comments

<mailto:TWCPolicyComments@twc.state.tx.us>

Unfortunately I did not see the website until today so hopefully my comments will be added.

http://www.twc.state.tx.us/boards/wia/proposed_wia_waivers.pdf

Regarding the WIA usability, I think there should definately be more flexibility.

Given that WIA is a federal program, funds should not only be allowed for County or State wide usage but Nation wide usage as well.

For instance, if a WIA participant finds career specific courses via online at a certified institution in New York or California but the person is residing in Texas, then those courses should be available.

Also the document mentioned academic usage for "youth" which I find biased and discriminating towards the older population.

The older population has a greater probability exhausting federal student loans but are still lacking a degree. It is highly unlikely that the younger population has exhausted federal academic loans.

Program and School Certification boards should have a faster turn around in evaluating and approving courses -sometimes courses need to be approved rapidly so people can move quickly rather than waiting around for months before they can actually get started or settling for the current offerings which will probably be something for which they have limited interest or will diverge from their actual career.

-----Original Message-----

From: Guthrie, Mark [SMTP:MGuthrie@winstead.com]
Sent: Monday, January 24, 2005 2:45 PM
To: 'Garrett, Donna J'; LWDA Exec Dir; 'david_hinds@airmail.net';
'jbelk@texasonline.net'; 'jgrissom1@aol.com'; Guthrie, Mark; 'sfvale@aol.com';
'tdietz@lcc.net'
Cc: Temple, Larry; Crump, Gene; Purnell, Mimi; Turney, Kathy; Ferland, Greg; Miller,
Reagan S; Carlson, Debbie; Townsend, Randy; Sage, Carole D
Subject: RE: Proposed Workforce Investment Act Waivers

I don't normally hit "reply to all" but I think I think the staff responsible for these waiver requests, and those providing strategic direction regarding the requests, and should be commended. This is excellent work, and these waiver requests are large steps in the right direction. As to the second request, I have previously expressed my concerns about the new allocation rules and will not repeat those here. Despite those concerns, I think allowing flexibility to use the funds where they will have the most impact is the right way for Texas to proceed. If there is any way I can support the Commission in seeking approval of these waivers, please let me know.

**STATE OF TEXAS
WAIVER REQUEST
WORKFORCE INVESTMENT ACT**

Redistribution Waiver

Statutory and Regulatory Provisions to be Waived:

The Texas Workforce Commission (Commission) requests a waiver under the authority of the Secretary of Labor to waive certain requirements of Workforce Investment Act (WIA), Title I, Subtitles B and E; and Sections 8–10 of the Wagner-Peyser Act. This authority is granted to the Secretary of Labor under Section 189 of WIA and in the implementing regulations at 20 C.F.R. §661.420.

The Commission is seeking a waiver from the provisions of WIA Section 133(c) and the provisions of 20 C.F.R. §667.160 (regarding reallocation among local areas). This waiver would provide flexibility to the Commission in redistributing funds among the local workforce development areas (workforce areas). Upon approval, this waiver will allow, through administrative efficiencies, for the opportunity to further workforce system integration.

Waiver Request:

The Commission requests a waiver of the WIA statutes relating to the redistribution of recaptured local funds and proposes to base the redistribution of WIA funds on the Commission's allocation rules (40 TAC §§800.51–800.75). The Commission ensures that financial reporting will be consistent with current U.S. Department of Labor (DOL) requirements and that federal funds will be effectively managed for maximum service provision and program performance.

Description of the Individuals Affected by the Waiver:

Workforce areas that provide quality services will have access to additional resources to meet the needs of employers, job seekers, and incumbent workers. In addition, the waiver will allow the Commission to promote the cost benefits of improved administrative efficiencies, encouraging the increased leveraging of resources within the workforce areas.

Goals to be Achieved by the Waiver:

- **Recaptured funds will be redistributed to workforce areas based on factors established by the Commission.**

The waiver request also allows the Commission to ensure that funds are redistributed to those workforce areas with the greatest need. In doing so, the Commission will determine the amounts to be redistributed to workforce areas based on factors such as:

- Requested amount;
- Demonstrated capacity to expend the formula funds; and
- Performance in the current and prior program years.
- **Facilitates maximum expenditure of recaptured federal funds.**

The Commission seeks to redistribute workforce funds to workforce areas that have achieved not only targeted expenditure levels but also established performance targets. Redistributing funds based solely on whether a workforce area achieves its expenditure target does not address performance issues, such as whether the workforce area met employers' needs for a highly skilled and job-ready workforce.

- **Improved administrative efficiencies.**

Approval of this waiver will serve to minimize administrative processes and costs of contracting by using similar redistribution procedures that support workforce system integration.

Programmatic Outcomes:

By utilizing the Commission's allocation rules for the redistribution of WIA funds, the Commission can ensure that federal funds will be more effectively and efficiently managed for maximum service provision and program performance. Approval of this waiver may not result in significantly higher performance outcomes; however, it will provide the opportunity for recaptured funds to be redistributed to workforce areas where the greatest potential impact may be realized. This waiver will streamline administrative practices, which will allow for greater efficiency in meeting the workforce development needs of employers and job seekers. Furthermore, it will enhance the quality of services in those workforce areas that have demonstrated consistent performance outcomes. Approval of this waiver will result in a reduction of unnecessary administrative processes.

Legal Argument:

Congress has clearly recognized the need for the Secretary of Labor to have as much flexibility as possible in order to assist states in accomplishing the goals of WIA. Section 189(i)(4) of WIA allows for general waivers of statutory or regulatory requirements by the Secretary. Section 189(i)(4)(C) states the Secretary shall provide a waiver if it is determined that the requirements requested to be waived impede the ability of the state or local area to implement their plans.

The purpose of the general statutory and regulatory waiver authority is to provide flexibility to states and local areas and enhance their ability to improve the statewide workforce investment system. The Secretary's waiver authority provides a vehicle to assist states and local areas in situations in which the regulations impede their ability to implement and continue development of a cohesive delivery system.

Waivers may be requested and granted to address impediments to the implementation of a strategic plan, as stated in 189(i)(4)(C), including the continuous improvement strategy, consistent with the key reform principles of WIA.

These key reform principles include the following:

1. Streamlining services and information to participants through a One-Stop delivery system
2. Empowering individuals to obtain needed services and information to enhance their employment opportunities
3. Ensuring universal access to core employment-related services
4. Increasing accountability of states, localities, and training providers for performance outcomes
5. Establishing stronger roles for workforce areas and the private sector
6. Providing increased state and local flexibility to implement innovative and comprehensive workforce investment systems
7. Improving youth programs through services that emphasize academic and occupational learning

The Commission, in submitting this request for waiver, recognizes the statutory exceptions to the Secretary's authority to approve waivers as stated under 29 U.S.C. section 2939(i)(4)(A)(i) also known as WIA section 189(i)(4)(A)(i). The Commission, therefore, is submitting a request for a waiver that does not violate or affect any requirements or provisions of WIA and its related Federal regulations.

State or Local Statutory or Regulatory Barriers:

There are no state or local statutory or regulatory barriers to implementing the requested waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver request, Commission rules and policies will be amended to comply with the terms of the waiver.

Describe the Process for Monitoring Implementation of the Waiver:

The Commission has a monitoring and performance accountability system that measures results for employers and other customers using the Texas workforce system. The Commission continuously analyzes performance reports and compares actual performance with contracted targets. The Commission will continue to make adjustments to monitoring performance requirements to ensure that performance goals and objectives are met for WIA services, including those programs created through the use of this waiver. The Commission will monitor progress under this waiver by reviewing monthly expenditure and performance reports submitted by the Boards, through regularly scheduled conference calls with Board executive directors, and through its monitoring and performance accountability system.

Opportunity for Public Comment:

The waiver request was presented at the Commission's January 4, 2005, public meeting and posted to the Texas Workforce Commission's Web site for review and comment. The waiver request also was discussed during the January 7, 2005, conference call with the Boards.

Two comments were received supporting the flexibility the state seeks through the waiver. One of these comments initially stated support of the state seeking flexibility; however, the balance of the comment was beyond the scope of the waiver.

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Cc: Temple, Larry; Crump, Gene; Purnell, Mimi; Turney, Kathy; Ferland, Greg; Miller,
Reagan S; Carlson, Debbie; Townsend, Randy; Sage, Carole D
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